S.B. CIVIL MISC. APPEAL NO. 659/2006
(Budha Ram & anr. Vs. Ramesh Singh & ors.)

DATED : 13.07.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajendra Choudhary for the appellants.

*****

By way of this appeal the claimant-appellants seek to challenge the award dated 01.02.2006 made by the Motor Accident Claims Tribunal (Addl. District Judge (Fast Track) No.4), Jodhpur in Claim Case No.97/2005; and seek enhancement over the compensation amount of Rs.2,23,000/- awarded by the Tribunal on account of accidental death of their daughter Kumari Rekha, 12 years of age.

Brief relevant facts are that on 27.01.2004 the deceased Kumari Rekha was riding a motorcycle RJ 19 1M 0309 with her uncle, Shravan Kumar going towards their village Lordi Panditji; at Jodhpur-Nagaur Road, the motorcycle was hit from behind by a bus bearing registration No.DL1 PA 4699 driven by the non-applicant No.1 Ramesh Singh; Shravan Kumar fell on the left hand side of the road with the motorcycle but Kumari Rekha fell towards right hand side and she was crushed beneath the

left wheel of the bus and causing her death on the spot.

The present appellants claimed compensation on account of death of Kumari Rekha stating her age at 12 years and being a brilliant in her 8th standard. The learned Judge of the Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid bus and held the respondents, driver, owner and insurer of the bus liable for compensation. While taking up quantification of compensation, the learned Judge found that the deceased was 12 years in age having no independent income and was dependent on her parents. Learned Judge observed that in such matters relating to death of a child, computation of compensation is based on assumptions and ought to be computed liberally. With reference to the Second Schedule to the Motor Vehicles Act, learned Judge observed that the notional income of an unearning person is taken at Rs.15,000/- per annum and in the present case, it would be appropriate to assume her income at Rs.1100/- per month and in view of her age, a multiplier of 15 may be provided. In this manner, the learned Judge assessed pecuniary loss at Rs.1,98,000/-. Learned Judge provided Rs.10,000/- towards mental agony to the claimants and further Rs.10,000/- for loss of love, affection and services and also awarded Rs.5000/- towards funeral expenses. The Tribunal

has, therefore, made an award of Rs.2,23,000/- in favour of the claimants and allowed them interest at the rate of 7.5% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has strenuously contended that looking to the brilliance exhibited by the deceased in her studies where she had always excelled with distinction marks, she had a brilliant future ahead and the Tribunal has been in error in not awarding just compensation on account of her accidental death and the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 7.5% per annum.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that the Tribunal has made a reasonable award of just compensation in this case and the award cannot be said to be inadequate so as to call for any interference in appeal.

The deceased was about 12 years in age having no income. In such matters, the pecuniary loss could be assessed only on the basis of notional income and learned Judge of the Tribunal cannot be said to have erred in taking notional income of the deceased Kumari Rekha at

Rs.1100/- per month and thereby adopting a multiplicand of Rs.13,200/- per annum. Second Schedule to the Motor Vehicles Act that remains a good guide for assessment of compensation, provides for a multiplier of 15 for the victims upto the age of 15 years. The Tribunal has allowed the maximum multiplier and has assessed pecuniary loss at Rs.1,98,000/-. The Tribunal has further allowed Rs.20,000/- towards non-pecuniary loss and Rs.5000/- towards funeral expenses. The Tribunal has of course awarded interest only at the rate of 7.5% per annum but in view of the reasonable award made by the Tribunal and the present prevailing rates, such choice of rate of interest cannot be said to be unjustified.

Having regard to overall facts and circumstances of the case, this Court is of the opinion that the impugned award cannot be said to be too low or grossly inadequate so as to warrant any interference in appeal.

In the aforesaid view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

MK